

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Suyker, et al.

Patent No.: 7,666,198

Application No. 10/805,714

Issue Date: February 23, 2010

Filing Date: March 22, 2004

Confirmation No.: 9243

For: MECHANICAL ANASTOMOSIS SYSTEM FOR HOLLOW STRUCTURES

U.S. Patent no. 7,666,198

Issued on February 23, 2010

**REQUEST FOR RECONSIDERATION OF DISMISSAL OF REQUEST FOR
RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF WYETH**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

This is a request for reconsideration of the decision of April 21, 2010 (hereinafter “the Decision”) dismissing the patentee’s request for recalculation of patent term in view of Wyeth (hereinafter “Request for Recalculation”). This request is timely since it is being filed within one month of the date of the Decision for which reconsideration is requested.

The patentee’s Request for Recalculation was dismissed on the basis of one or more of grounds (A)-(G) set forth in the Decision. The patentee has reviewed grounds (A)-(G) and none of these grounds apply to the present patent. Thus, the dismissal of the Request for Recalculation is improper. Thus, reconsideration of the Decision and recalculation of the patent term for the above-identified patent in view of Wyeth is requested. Grounds (A)-(G) set forth in the Decision do not apply for the reasons given below.

(A) The patent is not a design patent, a reissue application and was not involved in a reexamination proceeding.

(B) The patent resulted from a utility application filed on March 22, 2004 and thus did not request from a utility or plant application filed under 35 U.S.C. 111(a) before May 29, 2000. No continued prosecution application was filed in the utility application which resulted in the present patent.

(C) The patent for which recalculation was requested did not result from an International application. Rather, the patent for which recalculation was requested resulted from a utility application filed on March 22, 2004 under 35 U.S.C. 111(a).

(D) The patent for which recalculation was requested issued on February 23, 2010 and thus did not issue after March 2, 2010.

(E) The Request for Recalculation was filed on February 16, 2010 and thus was not filed more than 180 days after the grant date of the patent.

(F) The Request for Recalculation was solely limited to the USPTO pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A) as evidenced by the fact that the patentee used the official USPTO form for filing the Request for Recalculation which expressly states that the Request for Recalculation was solely limited to the USPTO pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A).

(G) No civil action was filed pursuant to 35 U.S.C. 154(b)(4)(A) concerning the same patent at issue in this request.

Accordingly, for the foregoing reasons, none of the grounds (A)-(G) for dismissal of the Request for Recalculation applies and thus the dismissal should be withdrawn and the patent term for the above-mentioned patent should be recalculated.

It is the patentee's position that the delay in issuing the patent from the three-year anniversary of the filing of the patent application, namely, March 22, 2007 until the filing of a request for continued examination on October 30, 2007, should be added to the patent term adjustment for this patent as a result of this Request for Recalculation since this time period is more than three years from the filing date of the application which resulted in the patent and there is no other patent term adjustment during this period which overlaps with this adjustment period.

Date: April 27, 2010

Respectfully submitted,
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